

HOUSE BILL REPORT

E2SSB 5720

As Reported by House Committee On:
Civil Rights & Judiciary

Title: An act relating to the involuntary treatment act.

Brief Description: Concerning the involuntary treatment act.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Dhingra, Wagoner and Kuderer).

Brief History:

Committee Activity:

Civil Rights & Judiciary: 3/20/19, 3/28/19 [DPA].

**Brief Summary of Engrossed Second Substitute Bill
(As Amended by Committee)**

- Modifies the definition of "likelihood of serious harm" and "grave disability" under the adult and minor Involuntary Treatment Act (ITA) statutes.
- Increases the initial detention period from 72 hours to five days, not counting weekends and holidays, beginning January 1, 2020.
- Expands single-bed certifications to include commitments based on a substance use disorder, beginning July 1, 2026.
- Provides that a designated crisis responder may perform ITA evaluations by video provided that a licensed health care professional or professional person is present.
- Imports numerous provisions from the adult ITA to the minor ITA, and makes numerous other changes to adult and minor ITA provisions.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: Do pass as amended. Signed by 11 members: Representatives Jinkins, Chair; Thai, Vice Chair; Irwin, Ranking Minority Member; Goodman, Hansen, Kilduff, Kirby, Klippert, Orwall, Valdez and Walen.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Minority Report: Do not pass. Signed by 1 member: Representative Shea.

Staff: Ingrid Lewis (786-7289).

Background:

The Involuntary Treatment Act (ITA) statutes for adults and minors set forth the procedures, rights, and requirements for involuntary treatment. The provisions governing involuntary treatment of minors over the age of 13 are parallel with the adult ITA in many respects. Jurisdiction over involuntary treatment proceedings is with the superior court. County prosecutors represent petitioners, unless the petition is a state facility, in which case the Attorney General provides representation.

Under the ITA statutes, a person may be committed by a court for involuntary treatment if he or she, due to a mental health or substance use disorder, poses a likelihood of serious harm or is gravely disabled and will not consent to voluntary treatment. "Likelihood of serious harm" means that a person poses a substantial risk that:

- physical harm will be inflicted by a person upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself;
- physical harm will be inflicted by a person upon another, as evidenced by behavior which has caused such harm or which places another person or persons in reasonable fear of sustaining such harm;
- physical harm will be inflicted by a person upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others; or
- for adults, the person has threatened the physical safety of another and has a history of one or more violent acts.

"Grave disability" means that a person is in danger of serious physical harm due to a failure to provide for his or her own essential human needs, or that a person manifests a severe deterioration in routine functioning, evidenced by repeated and escalating loss of cognitive or volitional control over his or her actions, and is not receiving the care essential for health or safety. An adult may also be committed for involuntary treatment if he or she is in need of assisted outpatient behavioral health treatment.

Designated crisis responders (DCR) are responsible for investigating and determining whether a person may be in need of involuntary treatment. When a person is held for initial evaluation in an emergency room and refuses voluntary treatment, a DCR must detain the person to an appropriate facility or release the person within six hours of a referral for evaluation, not counting the time period prior to medical clearance. When a person is taken to a crisis stabilization unit, evaluation and treatment facility, emergency department, triage facility, secure detoxification facility, or approved substance use disorder treatment program by law enforcement, a mental health professional must examine the person within three hours of arrival at the facility, and a DCR must determine within 12 hours of a referral for evaluation whether detention is warranted. The DCR may petition the court for initial detention at an evaluation and treatment facility, secure detoxification facility, or approved substance use disorder treatment program for evaluation and treatment for up to 72 hours, excluding weekends and holidays, if the person poses a likelihood of serious harm or is gravely disabled.

Procedures and Rights.

Within the initial 72-hour evaluation period, the professional staff of the evaluation and treatment facility, secure detoxification facility, or approved substance use disorder treatment facility may petition the court to have a person committed for further behavioral health treatment. Following a probable cause hearing, if the person is found by a preponderance of the evidence to pose a likelihood of serious harm or to be gravely disabled, the court may order the person to be involuntarily committed for up to 14 days of additional treatment. Upon subsequent petitions and hearings, if commitment criteria are met by clear, cogent, and convincing evidence, a court may order up to an additional 90 days of commitment for adults or 180 days for minors at a state hospital. Successive terms of up to 180 days of commitment may be ordered if the grounds for commitment persist.

In the adult ITA, a petition for a 90-day and 180-day commitment must be filed at least three days before the expiration of the respective 14- and 90-day day commitment. In the minor ITA, the petition must be filed at least five days before the expiration of the current commitment period.

A person subject to commitment is afforded numerous rights and due process protections, including but not limited to the right to an attorney and the right to be present at all proceedings. Presence may be waived at trial settings. Only at a 90-day commitment hearing is there a requirement for the person to be present at a hearing.

Less Restrictive Alternative Treatment. When entering an order for involuntary mental health treatment, if a court finds that a less restrictive alternative (LRA) to inpatient commitment is in the best interest of the person or others, the court must order an appropriate less restrictive course of treatment.

Certain services are required under an LRA order and are statutorily outlined in the adult ITA. Less restrictive alternative treatment is for up to 90 days if ordered instead of a 14- or 90-day inpatient order, and up to 180-days if ordered instead of a 180-day inpatient order. Upon request by a party, an LRA order may be modified or revoked if the person is failing to adhere to the terms and conditions of the court-ordered treatment, is substantially deteriorating or decompensating, or poses a likelihood of serious harm.

Continuances. The granting of continuances in ITA proceedings is limited by statute and court rule, depending on the grounds. On a petition for a 14-day commitment or 90-day less restrictive treatment, a continuance is not to exceed 48 hours, on request of the respondent or their attorney; 24 hours upon the petitioner's showing of good cause; or no more than 14 days for physical conditions needing hospitalization. On a petition for a 90-day commitment, the hearing must occur within five judicial days of the first court appearance after the probable cause hearing, and a continuance must not exceed five additional judicial days on a motion for good cause by the respondent.

Court rule permits continuance or postponement for a reasonable time on a motion for good cause, or as required in the proper administration of justice, if the respondent consents or will not be substantially prejudiced.

Involuntary Medication. Involuntary medication may only be administered in an inpatient setting and only by following certain procedures. A person has the right to refuse psychiatric medication beginning 24 hours prior to the probable cause hearing unless it is determined that the failure to medicate may result in a likelihood of serious harm or substantial deterioration or substantially prolong the length of involuntary treatment, and there is no less intrusive course of treatment. There must be an attempt to obtain the person's informed consent prior to the administration of the antipsychotic medication, and for short-term treatment of up to 30 days, there must be an additional concurring medical opinion approving the medication. For treatment periods of 30 days or longer, a petition must be filed to obtain a court order alleging a lack of medically acceptable alternatives that are likely to be successful.

Single-Bed Certification.

A single-bed certification authorizes the Health Care Authority to certify a single bed for an ITA detention outside of an evaluation and treatment facility in certain circumstances. The detained person is able to temporarily receive involuntary inpatient mental health treatment services from a licensed facility that is not currently certified as an evaluation and treatment facility if the facility attests that it is willing and able to provide timely and appropriate mental health treatment. Single-bed certifications are available for patients who are detained based on a mental disorder, but are not available for patients detained based on a substance use disorder.

Civil Conversions from the Forensic System.

A person who has had nonfelony charges dismissed due to incompetency to stand trial may be referred for an evaluation for civil commitment under the ITA within 48 hours of a release from jail, or directly detained to an evaluation and treatment facility, depending on the seriousness of the offense. If the person is not subsequently detained, the DCR or treatment facility must present the decision to not detain to the superior court, which must hold a review hearing. In certain circumstances, a surety hearing must be ordered when the court has overridden the decision of the DCR or treatment facility.

A person who has had felony charges dismissed due to incompetency may be detained at a state hospital for up to 72 hours for an evaluation for civil commitment under the ITA. The state hospital may file a 180-day petition, and the defendant may be ordered to commitment if the petitioner can prove that the person presents a substantial likelihood of repeating similar criminal acts. Current law does not allow the state hospitals to file a 90-day petition on the grounds of grave disability or likelihood of serious harm.

State Agency Administration of the Involuntary Treatment Act.

The Health Care Authority is the state behavioral health authority that contracts with behavioral health organizations statewide to oversee the delivery of mental health and substance use disorder services for adults and minors, including involuntary treatment services.

The Department of Health is responsible for certifying and licensing behavioral health service providers, including evaluation and treatment facilities, secure detoxification facilities, and approved substance use disorder treatment facilities, and establishing minimum standards for service provision.

The Department of Social and Health Services operates and maintains three state-owned psychiatric inpatient hospitals for the care of adults and minors with mental illnesses: Western and Eastern State Hospitals which serve adults, and the Child Study and Treatment Center, which serves minors.

Summary of Amended Bill:

The reference to "routine functioning" in the definition of "gravely disabled" is removed and replaced with "safe behavior." "Severe deterioration from safe behavior" is defined to mean that a person will suffer or continue to suffer severe and abnormal mental, emotional, or physical distress if not treated, and that the distress is associated with significant impairment of judgement, reason, or behavior.

"Likelihood of serious harm" to others is expanded to include behavior which has caused substantial pain or which places other people in reasonable fear of harm to themselves or others.

"Violent act" is expanded to mean behavior that resulted in injury or substantial loss to property.

Beginning January 1, 2020, the period for initial detention under the Involuntary Treatment Act (ITA) is increased from 72 hours to five days, excluding weekends and holidays.

Beginning, July 1, 2026, single-bed certifications are expanded to include detentions based on a substance use disorder when a secure detoxification bed or approved substance use disorder treatment program bed is not available.

A treating facility may file a petition for initial detention and proof of service at the request of the designated crisis responder (DCR), in instances when a person is detained for treatment in a different county from where the person was initially detained.

Timeframes provided for continuances are removed, and the court rule is adopted. Involuntary commitment hearings may be continued for good cause or as required in the proper administration of justice if the committed person consents or will not be substantially prejudiced.

The requirement that a committed person personally appear at the trial setting date after the filing of a 90-day petition is removed. The requirement that a person must personally appear at the 90-day or 180-day hearing is also removed.

References to "mental health disorder and substance use disorder" are changed to "behavioral health disorder."

Adult Involuntary Treatment Act.

A new definition of "written order of apprehension" is added to mean a court order for a peace officer to detain a person for involuntary treatment. Written orders of apprehension must be entered into the Washington Crime Information Center Database.

Chemical dependency professionals are added to the list of persons able to perform the examination required within three hours of a peace officer's delivery of a person at a facility.

A DCR may conduct evaluations under the ITA by video provided that a licensed health care professional who can adequately and accurately assist with obtaining any necessary information is available at the time of the evaluation. "Video" is defined as the delivery of behavioral health services through the use of interactive audio and visual technology permitting real-time communication between a person and a DCR for the purpose of evaluation. The term does not include the use of audio-only telephone, facsimile, electronic mail, or store and forward technology. "Store and forward technology" is defined as the use of an asynchronous transmission of a person's medical information from a mental health service provider to a DCR, which results in medical diagnosis, consultation, or treatment.

The right to treatment by spiritual means is clarified to be in addition to treatment otherwise proposed. A person's right to reasonable choice of an available physician, physician assistant, psychiatric advanced registered nurse practitioner, or other person qualified to provide evaluation or treatment services under the ITA is created, subject to provisions and regulations related to single-bed certification.

Surety hearing provisions are removed.

A state psychiatric hospital may, without an evaluation by a DCR, directly file a 90-day involuntary treatment petition on the grounds of grave disability or likelihood of serious harm for a defendant who has had a felony charge dismissed due to incompetency.

A less restrictive alternative (LRA) treatment provider or designee is authorized to administer outpatient involuntary medication to a person on an LRA, provided that:

- there is a court order authorizing involuntary medication as part of the LRA order;
- the provider has attempted and failed to obtain consent from the person;
- the person had previously been provided involuntary medication during the commitment period; and
- there is a concurring medical opinion approving the medication by medical professionals specified in the act.

A request to modify or revoke an LRA order may be made by a court, in addition to a party. Inpatient treatment periods following the revocation of an LRA order are clarified. If the LRA order was as a result of a 14-day petition or a petition for assisted outpatient behavioral health treatment, the inpatient period must be for 14 days. If the LRA order was as a result of a 90- or 180-day petition, the inpatient period is the number of days remaining on the LRA order.

Minor Involuntary Treatment Act.

Various provisions from the adult ITA are imported into the minor ITA, including:

- numerous definitions, including a definition for "history of one or more violent acts," which in the minor ITA refers to the period of time five years prior to the filing of a petition, excluding time spent, but not any violent acts committed, in a mental health facility, a long-term alcoholism or drug treatment facility, or in confinement as a result of a criminal conviction;
- authorization for a peace officer to take a person into custody and deliver them to specified facilities based on reasonable cause to believe that the person meets detention criteria, except that delivery of a minor to a secure detoxification facility or approved substance use disorder treatment program is subject to availability of beds until July 1, 2026;
- certain patient rights provisions, including the right to an inventory of possessions upon entry into involuntary detention;
- authorization for a facility to detain a person who has been arrested for up to eight hours following drop-off by a peace officer;
- the duty to warn or take reasonable precautions to protect others from violent behavior, which the facility may discharge by reasonable efforts to communicate the threat to a victim or victims and law enforcement personnel;
- language protecting dismissal of a petition based on a failure to meet timeliness requirements, provided that the delays are not a result of a facility or DCR's total disregard of the requirements;
- the Joel's Law remedy available to an immediate family member or guardian or conservator of a person based on a petition for court review of a DCR decision to not detain a person under the ITA;
- utilizing prior history evidence which resulted in repeated hospitalizations or peace officer interventions resulting in juvenile charges, when determining whether an inpatient or LRA commitment is appropriate; and
- provisions related to the financial responsibility for ITA services provided outside of a facility maintained and operated by the Department of Social and Health Services (DSHS).

The venue for the detention or revocation hearing of a minor is limited to the county where treatment is being provided.

A facility may restrict a minor's ability to access counsel during the initial detention period if there is an immediate risk of harm to the minor or others.

The time frame to file a 180-day petition is shortened from five days before the expiration of the current commitment period to three days.

Miscellaneous.

The Washington State Supreme Court is requested to adopt rules regarding access to files and records of court proceedings under the adult and minor ITA statutes by certain state agencies and persons.

Interpreters in an involuntary commitment hearing may appear by video, unless the court on its own motion or for good cause requires all parties and witnesses to appear in person.

The Health Care Authority (HCA) must convene an ITA work group to evaluate the implementation of the act, including implementation of the five-day detention standard and other vulnerabilities in the involuntary treatment system.

Membership of the work group must consist of not more than 18 members appointed by the Governor, including but not limited to:

- representatives from the HCA, the DSHS, and the Department of Health;
- certified short-term and long-term ITA providers, including providers who accept single-bed certifications;
- prosecuting and defense attorneys;
- family members and persons with lived experience of behavioral health disorders and advocates;
- DCRs;
- behavioral health administrative services organizations and managed care organizations;
- law enforcement; and
- judicial officials in involuntary treatment cases.

Interested legislators and legislative staff may participate, and the Governor must request participation by a representative of tribal governments. Staff support shall be provided by the HCA.

Recommendations and a report must be submitted to the Legislature by January 1, 2020, and June 30, 2021.

Amended Bill Compared to Engrossed Second Substitute Bill:

The amended bill provides that a designated crisis responder (DCR) may perform evaluations by video provided that a licensed health care professional or professional person is present. "Video" is defined as the delivery of behavioral health services through the use of interactive audio and visual technology permitting real-time communication between a person and a DCR for the purpose of evaluation. The term does not include the use of audio-only telephone, facsimile, electronic mail, or store and forward technology. "Store and forward technology" is defined as the use of an asynchronous transmission of a person's medical information from a mental health service provider to a DCR, which results in medical diagnosis, consultation, or treatment. Technical corrections are made to align amended language in sections with multiple effective dates. An obsolete definition of "information related to behavioral health" in the adult and minor Involuntary Treatment Act is removed.

Appropriation: None.

Fiscal Note: Requested on March 13, 2019.

Effective Date of Amended Bill: This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for sections 14, 17, 20, 21, 22, 23, 25, 31, 33, 35, 38, 55, 61, 62, 76, 82, 85, 88, and 91, relating to implementation of the five-day initial

detention standard, which take effect January 1, 2020, and sections 15, 18, 26, 39, 45, 56, 59, 72, 79, 83, 86, 92, 94, and 97, relating to prior delayed effective dates, which take effect July 1, 2026.

Staff Summary of Public Testimony:

(In support) Modifications have been made in the adult Involuntary Treatment Act (ITA) that have not been imported to the minor ITA statute. For example, the adult ITA was amended last year to allow for video testimony, but a similar amendment was not made to the minor ITA. This is a clean-up bill that makes sure that policies are consistent between adults and juveniles. The bill changes references from mental health and substance use disorder to behavioral health disorder.

The definition of "grave disability" is changing from routine functioning to safe behavior, because civil commitment is to ensure that people are kept safe. A person needs to be severely impaired before gravely disabled means anything. A state high school debate champion and passionate young man died by suicide attempting to get help. The definition of "danger to others" needs to change. Under current law, if a person threatens an infant, the infant would have to testify that that he or she was scared for their life. This is not feasible.

Increasing the detention period from 72 hours to five days is an attempt to make sure that a patient's health is put first, and the medical community is at the forefront of making decisions. Oregon has a five-day detention period. The average length of stay for a person prior to a 14-day order being entered is eight days. People who are providing behavioral health services and people who have gone through civil commitment say that it takes three to five days to detoxify from drugs. In order for a comprehensive and accurate evaluation to be done, medical professionals need time to diagnose individuals. The hospital maintains the authority to discharge at any point in time. If a patient no longer needs to be in an inpatient setting, the hospital can discharge. Many people with behavioral health disorders have the ability to suppress symptoms for the first 72 hours.

Involuntary treatment, as well as involuntary medication, could help many people work towards being competent. Single-bed certifications can help individuals who have a substance use disorder access a bed.

(Opposed) The change to the grave disability standard is vague and will lead to litigation that will likely not survive appeals. The fiscal note does not indicate the estimated increase in detentions.

The current definition of "violent acts" includes homicide and attempted suicide. The expansion includes any act that causes an injury. A brother and a sister who have an argument over a remote control that leads to a push or scratch would constitute a violent act. Forced medication is administered in a controlled environment. A hospital is able to monitor the individual. Allowing the practice to happen when a person is in the community could lead to serious issues. A provider will not know if the person has been on drugs or whether the person is armed, for example, and it would destroy the doctor-patient relationship.

Interpreters should be in the same room as the patient. This bill is a civil rights nightmare for people with behavioral health disorders. The extension in the length of time a designated crisis responder can have a person detained for treatment and evaluation without a judicial hearing or court order from 72 hours to five days violates equal protection laws. Criminal suspects arrested without a warrant get a probable cause determination by a court within 48 hours of arrest. Sexually violent predators have a probable cause determination within 72 hours. Detentions should be kept to the minimum time necessary to keep people safe until court hearing can take place.

A stakeholder work group should be convened. This bill is not the answer to the problem.

Persons Testifying: (In support) Senator Dhingra, prime sponsor; Kristina Sawyckj; Russell Brown, Washington Association of Prosecuting Attorneys; David Combs, National Association of Mental Illness Eastside; and Jan Burbank.

(Opposed) Mike De Felice, King County Department of Public Defense; Rebecca Faust; David Lord, Disability Rights Washington; Marsha Cutting; Kari Reardon, Washington Defender Association and Washington Association of Criminal Defense Lawyers; and Laura Van Tosh.

Persons Signed In To Testify But Not Testifying: Juliana Roe; and Diane Swanberg.